IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 2297 of 1996

Between:

Karri Dinakar, S/o Satyanandam, Employee in F.C.I.,
Visakhapatnam, r/o Ruchikonda, Visakhapatnam.

..... PETITIONER

AND

1 The IV Additional Dist. Munsif, Visakhapatnam.
2 Smt. K.Vivekavathi, W/o K.A.Narayana,

Employee in Judicial Department,
D.No.14-37-39(V), Visakhapatnam.
3 Sri Krishna Cooperative House Building Society Ltd.,

rep.by its Secretary, Sri Nagar, Visakhapatnam-16.

4 The Dy.Registrar (Cooperative Societies), Arbitration,

Visakhapatnam.

(Respondent No.3 is dismissed for default

as per Court order dated 13-2-2003).

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly a writ in the nature of mandamus declaring that the 4th Additional District Munsif, Visakhapatnam has no jurisdiction to entertain E.A.No.1241/94 in E.P.No.516/94 in ARC No.525/89-90 (Dy.Registrar Arbitrarion, Visakhapatnam) and consequently the said proceedings are not maintainable.

Counsel for the Petitioner : MR.K.V.SUBRAMANYA NARASU

Counsel for Respondent No.1 : None appeared.
Counsel for Respondent No.2: MR.A.V.SESHA SAI
Counsel for Respondent No.4 : G.P. for Cooperation.

The Court made the following :

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ORDER :

This writ petition is filed by the petitioner aggrieved by the order passed by the first respondent-IV Additional District Munsif, Visakhapatnam, in E.A.No.1241 of 1994 in E.P.No.516 of 1994 in A.R.C.No.525/89-90 on the ground that the petitioner is not a party to the award proceedings pursuant to which orders were passed by the fourth respondent adversely effecting the interests of the petitioner.

It is stated by the learned counsel for the petitioner that the third respondent-society is a Cooperative House Building Society in which the second respondent is a member and by virtue of the Membership, the third respondent allotted a plot in the year 1980. However, subsequently, the third respondent allotted the same plot in favour of the writ petitioner. Therefore, the second respondent raised a dispute under Section 61 of the Andhra Pradesh Cooperative Societies Act, 1964 (for brevity 'the Act'). Thereafter, the matter was referred for arbitration to the fourth respondent and the fourth respondent passed an award in favour of the second respondent. But in the meanwhile, the writ petitioner had constructed a house a in the allotted plot and the writ petitioner was also not made a party to the proceeding before the fourth respondent, where the award was passed in favour of the second respondent. After the award was passed by the fourth respondent, the second respondent got the proceedings transferred under Section 70-A of the Act to the file of the first respondent where E.P.No.516 of 1994 and also E.A.No.1241 of 1994 were filed seeking police aid for the purpose of execution of the award in the process of demolishing the existing structures in the plot. At that stage, the petitioner has come up with the present writ petition and obtained stay of dispossession. It is also stated

by the learned counsel for the petitioner that as long as the petitioner was not made a party to the award proceedings, the award that was passed is not binding, and therefore, the said award cannot be executed against the petitioner.

The learned counsel appearing for the second respondent, however, opposed the contentions of the petitioner. It is stated that the plot allotted to the second respondent was again reallotted to the writ petitioner when the petitioner's father was in the management of the third respondent society, and it is only a collusive action, which deprived the second respondent of the plot allotted to her. It is further stated that the petitioner filed transfer C.M.P.No.107 of 1995 before this Court for transferring the execution petition from the first respondent to any other Court. But the petitioner was not successful, as the said transfer C.M.P. itself was dismissed on 28-9-1995. The learned counsel also contended that if the petitioner is aggrieved against the award, he ought to have filed an appeal before the Cooperative Tribunal under the provisions of the Act. But the petitioner did not choose to question the said award, but only stalling the execution proceedings. Therefore, sought to dismiss the writ petition.

Heard both sides and considered the material on record.

Admittedly, the writ petitioner was not a party to the award proceedings before the fourth respondent where the award was passed in favour of the second respondent. In fairness, the writ petitioner ought to have been impleaded in the award proceedings, a dispute in which the petitioner is eminently interested and the award passed had, in fact, affected the interest and rights of the petitioner. However, as the petitioner was not impleaded or made a party to the award proceedings, it would be appropriate for the writ petitioner to file an appeal before the appellate authority assailing the award, putting forth all his objections or defence, for proceeding against him in respect of the plot allotted to him. Further, as there is an effective alternative remedy of appeal is available, it would not be proper for this Court to go into the merits of the matter.

Under the above circumstances, the writ petition is disposed of directing the petitioner to file an application for obtaining certified copy of the award and file an appeal within a period of six weeks from today. The fourth respondent is also directed to provide certified copy of the award, within two weeks from the date of the application. Till the expiry of the period referred to above for filing the appeal, the interim order passed by this Court on
9-2-1996 shall continue. No order as to costs.

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(S.ANANDA REDDY,J.)

2-12-2004.

Msr.

NOTE : Office to dispatch copy of this

order within two days.

B/o.

Msr.

To

1 The IV Additional Dist. Munsif, Visakhapatnam.
2 Smt. K.Vivekavathi, W/o K.A.Narayana,

Employee in Judicial Department,
D.No.14-37-39(V), Visakhapatnam.
3 The Dy.Registrar (Cooperative Societies), Arbitration,

Visakhapatnam.

4. 2CCs to G.P. for Cooperation, High Court Buildings,

Hyderabad (OUT).

5. 2CD copies

HON’BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.2297 of 1996

2-12-2004.

(Msr)